REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Third Division

GLOBAL CARS PHILS., INC. *Petitioner,*	**CTA CASE NO. 10225**
-*versus*-	Members: **RINGPIS-LIBAN,** *Chairperson, and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 07 2023 4:16 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

Before the Court is a Petition for Review[1] filed by petitioner Global Cars Phils., Inc. against respondent Commissioner of Internal Revenue ("CIR"), seeking the cancellation and withdrawal of assessments for the alleged deficiency value added tax (VAT) and administrative penalties for the period from 1 July 2013 to 30 June 2014 in the aggregate amount of ₱25,380,274.63.

The Parties

Petitioner, Global Cars Phils., Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at Ford Pampanga Building, Jose Abad Santos Avenue, San Jose, City of San Fernando, Pampanga. It is registered with the Securities and Exchange Commission (SEC) under SEC Registration No. A 199710131 dated 27 May 1997.[2]

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[1] *See* Petition for Review, Division Records Vol. 1, pp. 6-25.
[2] *Ibid.*

Meanwhile, respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested with authority to exercise the functions of his office, including *inter alia*, the assessment and collection of all internal revenue taxes, fees and charges, enforcement of all forfeitures, penalties and fines connected therewith and the power to abate or cancel a tax liability when the tax or any portion thereof appears to be unjustly or excessively assessed pursuant to the provisions of the ***Tax Code***.[3]

The Facts

On 9 March 2015, petitioner received a Letter of Authority ("LOA") with reference numbers SN: eLA201200004326 and LOA-124-2015-00000014 authorizing the examination of its books of accounts and other accounting records for all internal revenue taxes for the period from 1 July 2013 to 30 June 2014.[4]

On 20 June 2016, petitioner, through its Vice President and Chief Finance Officer, Mr. Alfie M. Adriano, executed a Waiver of Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code ("Waiver of the Defense of Prescription").[5]

Thereafter, the BIR issued a Preliminary Assessment Notice ("PAN") on 27 October 2017 assessing petitioner for deficiency Income Tax, VAT, Expanded Withholding Tax ("EWT"), and administrative penalties.[6]

On 18 December 2017,[7] petitioner received from the BIR a Formal Letter of Demand ("FLD"), dated 14 December 2017, assessing petitioner for deficiency VAT and administrative penalties in the amount of ₱22,574,918.74.[8]

On 31 May 2018,[9] petitioner then received a Final Decision on Disputed Assessment ("FDDA"), dated 25 May 2018, issued by the Excise LT Audit Division II of the Large Taxpayers Service, assessing petitioner for ₱23,813,453.52.[10]

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3 *Ibid.*
4 *Ibid.*
5 *Ibid.*
6 *Ibid.*
7 Exhibit P-12, Division Records Vol. 2, pp. 800-804.
8 Pre-Trial Order, Division Records Vol. 3, pp. 1175-1187.
9 Exhibit P-16, Division Records Vol. 2, pp. 847-850
10 Pre-Trial Order, Division Records Vol. 3, pp. 1175-1187.

On 12 November 2019,[11] petitioner received a copy of the Final Decision on its Request for Reconsideration issued by respondent denying the petitioner's request for reconsideration and reiterating the arguments as well as the details of the assessment stated in the FDDA. Petitioner was requested to pay deficiency VAT and administrative penalties in the amount of ₱25,380,274.63.[12]

Aggrieved, petitioner filed the instant case on 12 December 2019.[13] Respondent filed his Answer with Opposition on 9 March 2020.[14]

Petitioner and respondent filed their Pre-Trial Briefs on 29 October 2020[15] and 28 October 2020,[16] respectively. Following this, the Pre-Trial Conference was held on 3 November 2020.[17]

The parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 3 December 2020.[18] On 15 February 2021, the Court issued a Pre-Trial Order.[19]

During trial, petitioner presented the following witnesses:

(1) Allan S. Laxina, its Assistant Vice President and Corporate Tax Head;[20] and
(2) Lyka M. Jimenez, its Sales Administration Head;[21]

Petitioner formally offered its documentary evidence on 14 July 2021.[22] Respondent filed its Comment/Opposition on 29 July 2021.[23] Then, in a Resolution dated 4 December 2021,[24] the Court admitted all of petitioner's formally offered evidence except for Exhibit P-15.

Meanwhile, respondent presented its sole witness Revenue Officer Maria Leonora Raquel.[25]

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[11] Exhibit R-13, BIR Records pp. 570-571.
[12] Pre-Trial Order, Division Records Vol. 3, pp. 1175-1187.
[13] *See* Petition for Review, Division Records Vol. 1, pp. 6-25.
[14] *Id.*, pp. 308-327.
[15] Division Records Vol. 2, pp. 911-926.
[16] *Id.*, pp. 1073-1083.
[17] v, pp. 1085-1087.
[18] *Id.*, pp. 1134-1147.
[19] Division Records Vol. 3, pp. 1175-1187.
[20] Exhibits P-32 and P-32-a, Division Records Vol. 2, pp. 565-585; p. 730; Exhibits P-35 and P-35-a, *id.*, pp. 1062-1067.
[21] Exhibits P-34 and P-34-a, *id.*, pp. 926-934.7
[22] Division Records Vol. 3, pp. 1205-1223,
[23] *Id.*, pp. 1371-1375
[24] *Id.*, pp. 1380-1381.
[25] Exhibits R-16 and R-16-A, Division Records Vol. 2,pp. 1101-1112; Division Records Vol. 3, p. 1394.

On 24 March 2022, respondent formally offered his evidence[26] without petitioner's Comment.[27] In a Resolution,[28] dated 30 June 2022, the Court admitted all of respondent's formally offered exhibit except Exhibit R-9 for failure to have the same marked.

Thereafter, respondent filed his Memorandum on 8 August 2022[29] while petitioner filed its Memorandum on 5 September 2022.[30] The case was then submitted for decision on 7 September 2022.[31]

Hence, this Decision.

The Issue[32]

The issues submitted for this Court's resolution are:

(i) Whether or not the deficiency VAT assessed by respondent CIR in the aggregate amount of ₱25,380,274.63 pertaining to sales made to a registered freeport-zone enterprise are subject to zero percent (0%) VAT.

(ii) Whether or not petitioner is liable for the payment of deficiency VAT and administrative penalties in the aggregate amount of ₱25,380,274.63 for the fiscal year ending 30 June 2014.

Arguments of the Parties

Petitioner's Arguments[33]

Petitioner argues that respondent gravely violated its right to due process as it was left to determine for itself the composition of the items of deficiency assessment.

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[26] *Id.*, pp. 1397-1405
[27] *Id.*, p. 1407.
[28] *Id.*, pp. 1411-1412.
[29] *Id.*, pp. 1413-1420.
[30] *Id.*, pp. 1431-1452.
[31] *Id.*, p. 1453.
[32] Pre-Trial Order, *id.*, pp. 1175-1187.
[33] *See* Arguments and Discussion, Petition for Review, Division Records Vol. 1, pp. 13-22; Memorandum for the Petitioner, Division Records Vol. 3, pp. 1431-1452.

On the substantive issue, petitioner maintains that its sales to registered freeport zones are not subject to 12% VAT. It explains that it is a VAT-registered taxpayer while its customer, Westcoast Automotive Corporation ("WAC"), is a freeport zone-registered enterprise registered with the Subic Bay Metropolitan Authority (SMBA). The automobiles and motor vehicles are goods or merchandise that are used in connection with WAC's registered activity as an ECOZONE enterprise. As such, petitioner's sales to the freeport zone is deemed a technical importation and should not be subject to internal revenue taxes, including VAT. Petitioner also points out that WAC is engaged in the sale and distribution of motor vehicles, spare parts, accessories, batteries, tires, and other related products, and in the rendition of services including but not limited to repairs, maintenance, and leasing, except financial leasing or renting out of motor vehicles.

According to petitioner, respondent's reliance on ***Revenue Memorandum Circular ("RMC") No. 25-99*** and ***RMC No. 50-07*** in excluding petitioner's sale of vehicles to WAC from the application of VAT zero-rating is improper and contrary to law.

Particularly, respondent's reliance on ***RMC No. 25-99*** to limit the coverage of the exemption to raw materials, supplies, equipment machineries, spare parts, packaging materials or wares to be used in connection with the registered activity is misplaced as no such intention can be gleaned from the plain reading of the provisions of relevant laws it seeks to implement.

Meanwhile, ***RMC No. 50-07*** imposes an unreasonable burden on the taxpayer requiring it to ensure that the goods sold will be used exclusively within the freeport zone. According to petitioner, its obligation, for purposes of determining whether the sale is subject to 12% VAT is limited to ensuring that: (1) its customer, in this case WAC, is a Freeport Zone Enterprise; and (2) it will use the goods sold within the freeport zone. It is not its obligation to ensure that the customers of its customers will also use the goods sold within the freeport zone.

Respondent's Arguments[34]

Respondent argues that petitioner cannot raise for the first time on appeal the issue on the validity of the PAN and FLD for alleged failure of respondent to provide copies of their attachments, particularly Annex "A-7" of the PAN and Annex "B-1" of the FLD. According to respondent, it is an undisputed issue that deserves scant consideration by this Court. Assuming that the issue may be considered by this Court, respondent maintains that the PAN and FLD clearly state the factual and legal bases of the assessments as shown in the attached Details of Discrepancies. He points out that petitioner

[34] Memorandum, *id.*, pp. 1413-1429.

was able to file an intelligent protest exhaustively discussing its arguments and refuting the assessment in compliance with due process requirements.

On the substantive issue, respondent insists that petitioner's sale of automobiles to WAC is subject to 12% VAT. According to respondent, sales of automobiles to WAC are not classified as "merchandise or goods" as contemplated under ***R.A. No. 7916*** as implemented by ***RMC No. 25-99*** hence such sales are subject to 12% VAT. Citing ***RMC No. 50-07***, respondent argues that the sale of automobiles shall be subject to 0% VAT only if said automobiles are to be used exclusively within the subject Special Freeport Zone ("SFZ"). Respondent then points out that petitioner failed to submit proof that the automobiles sold to WAC are exclusively within the Subic Freeport Zone. Petitioner, as a dealer of motor vehicles, sells to customers within and outside the freeport zone, and it cannot be concluded that the automobiles it sold to WAC are being used exclusively within the SFZ.

Finally, respondent stands by its imposition of administrative penalties for petitioner's failure to timely pay deficiency VAT.

The Ruling of the Court

The instant Petition for Review is meritorious.

The assessment is void for respondent's failure to prove that petitioner received the PAN and FLD together with its attachments.

Settled is the rule that an assessment issued in violation of the right of the taxpayer to due process are null and void and bears no valid fruit.[35] ***Section 228 of the Tax Code*** expressly provides that the taxpayer should be informed of the law and facts on which the assessment is made:

> "SECTION 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: provided, however, That a preassessment notice shall not be required in the following cases:
>
> ...
>
> The taxpayers shall be **informed in writing of the law and the facts on which the assessment is made**; otherwise, the assessment shall be void.

[35] Commissioner of Internal Revenue v. Metro Star Superama, Inc., G.R. No. 185371, 8 December 2010.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings. ..." (Emphasis, Ours.)

Implementing ***Section 228 of the NIRC, Section 3 of Revenue Regulations ("Rev. Regs.") 12-99*** provides:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. —

3.1 Mode of procedures in the issuance of a deficiency tax assessment:

3.1.1 Notice for informal conference. — The Revenue Officer who audited the taxpayer's records shall, among others, state in his report whether or not the taxpayer agrees with his findings that the taxpayer is liable for deficiency tax or taxes. If the taxpayer is not amenable, based on the said Officer's submitted report of investigation, the taxpayer shall be informed, in writing, by the Revenue District Office or by the Special Investigation Division, as the case may be (in the case Revenue Regional Offices) or by the Chief of Division concerned (in the case of the BIR National Office) of the discrepancy or discrepancies in the taxpayer's payment of his internal revenue taxes, for the purpose of "Informal Conference," in order to afford the taxpayer with an opportunity to present his side of the case. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the notice for informal conference, he shall be considered in default, in which case, the Revenue District Officer or the Chief of the Special Investigation Division of the Revenue Regional Office, or the Chief of Division in the National Office, as the case may be, shall endorse the case with the least possible delay to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative, as the case may be, for appropriate review and issuance of a deficiency tax assessment, if warranted. DETACa

3.1.2 Preliminary Assessment Notice (PAN). — If after review and evaluation by the Assessment Division or by the Commissioner or his duly authorized representative, as the case may be, it is determined that there exists sufficient basis to assess the taxpayer for any deficiency is tax or taxes, the said Office shall issue to the taxpayer, at least by registered mail, a Preliminary Assessment Notice (PAN) for the proposed assessment, showing in detail, the facts and the law, rules and regulations, or jurisprudence on which the proposed assessment is based x x x. If the taxpayer fails to respond within fifteen (15) days from date of receipt of the PAN, he shall be considered in default, in which case, a formal letter of demand and assessment notice shall be caused to be issued by the said Office, calling for payment of the taxpayer's deficiency tax liability, inclusive of the applicable penalties.

. . .

> 3.1.4 Formal Letter of Demand and Assessment Notice. — The formal letter of demand and assessment notice shall be issued by the Commissioner or his duly authorized representative. The letter of demand calling or payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void x x x. The same shall be sent to the taxpayer only by registered mail or by personal delivery. If sent by personal delivery, the taxpayer or his duly authorized representative shall acknowledge receipt thereof in the duplicate copy of the letter of demand, showing the following: (a) His name; (b) signature; (c) designation and authority to act for and in behalf of the taxpayer, if acknowledged received by a person other than the taxpayer himself; and (d) date of receipt thereof."

Here, the PAN with attached Details of Discrepancies,[36] as admitted in evidence, contains five (5) pages duly received by Gladys Ann G. Mandili on 27 October 2017. A further perusal of the PAN with attached Details of Discrepancies would show that, as aptly claimed by petitioner, it did not include Annex "A-7". The Details of Discrepancies which respondent claims is sufficient to inform the taxpayer of the facts and law on which assessment is made simply states:

> "1. Sales to locators subjected to 0% VAT – ₱111,915,793.66 (Annex A-7)
> Verification on the Summary List of Sales revealed that there were sales made to Ford Subic and Westcoast Automotive Corporation totaling ₱111,915,793.66 representing vehicle and spare parts sales which were subjected to 0% VAT hence, assessed pursuant to RMC 25-99 which states that "sales of ordinary automobiles to PEZA, SBMA and other ECOZONE registered enterprises are not entitled to VAT zero-rating", in relation to Sections 106 and 108 of the NIRC, as amended. Moreover, Westcoast Automotive Corporation and Ford Subic are dealers who sells to customers within and outside the PEZA Zone, just like any other dealer of motor vehicles. Sales subject to zero-rated, if any, should be the sales of Westcoast Automotive Corporation and Ford Subic to qualified customers and not Global Cars Phils. Inc's sales to Westcoast Automotive Corporation and Ford Subic.
> ..."

Based on the PAN, Annex "A-7" purportedly refers to the Sales to locators subjected to 0% VAT resulting to the audit adjustment in the amount of ₱111,915,793.66. Pertinently, the VAT deficiency assessment per PAN was computed as follows:

II. VALUE-ADDED TAX (VT)	
Taxable Sales/Receipts per Return (A-4)	₱ 2,108,093,486.51
Add: Adjustments per Audit	
Sales to locators subjected to 0% VAT **(Annex A-7)**	111,915,793.66
Taxable Sales/Receipts per Audit	₱ 2,220,009,280.17
Output Tax Due	₱ 266,401,113.62

[36] Exhibits "R-5" and "R-5-A", BIR Records, pp. 275-279.

Less: Creditable Input Tax		
Input tax on local purchases claimed per return (Annex A-4)	₱ 263,678,506.42	
Input tax carried from previous quarter (Annex A-4)_	45,281,827.00	
Input tax deferred on Capital Goods exceeding ₱1M (Annex A-4)	2,463,682.40	
Total	₱ 311,424,015.82	
Less: Input tax on purchase of Capital Goods for succeeding period (Annex A-4) *(sic)*	2,348,113.70	
Input tax closed to expense	229,481.02	
Input tax carried to subsequent quarter	56,265,523.20	
Net	₱ 252,580,897.90	
Less: Disallowed/unsupported input tax (Annex A-2)	960,003.61	
Disallowed input tax per TIN validation (Annex A-5)	343,387.34	251,277,506.95
VAT payable		₱ 15,123,606.67
Less: Tax credits/ payments (Annex A-4)		390,320.48
Deficiency tax		₱ 14,733,286.19
Add: Penalties		
Interest (7.26/14 to 10/31/17 (65.28%)		9,617,561.82
Total Amount Payable		**₱ 24,350,848.01**

It can be gleaned from the foregoing that Annex A-7 pertains to the Sales to locators subject to 0% VAT. The Details of Discrepancies likewise refers to the said Annex A-7. Without Annex A-7, petitioner could not determine the breakdown of the Sales to locators subject to 0% VAT in the amount of ₱111,915,793.66, in clear violation of its right to be informed of the facts and law on which the assessment is based.

Similarly, a perusal of the FLD shows that it lacks the Annexes referred therein which purportedly contain the details of the assessment.[37]

The Court also cannot give credence to respondent's argument that petitioner was able to file an intelligent protest, proving that the due process requirement was satisfied. The fact that a taxpayer is able to make a timely protest does not denigrate the fact that it was deprived of statutory and procedural due process to contest the assessment before it was issued.[38]

Moreover, under ***Section 3 (v), Rule 131 of the Rules of Court***, there is a disputable presumption that "a letter duly directed and mailed was received in the regular course of the mail." However, the presumption is subject to controversion and direct denial, in which case the burden is shifted to the party favored by the presumption to establish that the subject mailed letter was actually received by the addressee.[39]

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[37] Exhibits "R-7" and "R-7-A", BIR Records, pp. 380-382.

[38] Commissioner of Internal Revenue v. Next Mobile, Inc., G.R. No. 232055, 27 April 2022 (Notice) *citing* Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue, G.R. No. 172598, 21 December 2007

[39] Commissioner of Internal Revenue v. T Shuttle Services, Inc., G.R. No. 240729 (Resolution), 24 August 2020 *citing* Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue, G.R. No. 157064, 7 August 2006.

In the instant case, petitioner directly denied receipt Annex "A-7" of the PAN and Annex "B-1" of the FLD. The burden then shifts to respondent to establish that petitioner received the said attachments. However, respondent failed to present any proof to discharge said burden. As it stands, the evidence shows that petitioner did not receive said attachments, in violation of petitioner's right to due process.

On this point alone, cancellation of the deficiency assessment against petitioner for the period 1 July 2013 to 30 June 2014 is warranted. Nonetheless, the Court shall rule on the substantive issue of the case.

Sales to WAC, a freeport zone-registered enterprise, are subject to VAT zero-rating.

Petitioner claims that its sales of automobiles to WAC, a freeport zone-registered enterprise registered with the Subic Bay Metropolitan Authority ("SBMA") pursuant to ***Republic Act No. 9400***,[40] are subject to VAT zero-rating under ***Section 106(A)(2)(a)(5) of the Tax Code, as amended***, which pertinently provides:

> "SECTION 106. Value-Added Tax on Sale of Goods or Properties. -
>
> (A) Rate and Base of Tax. - There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to ten percent (10%) [currently 12%] of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.
>
> ...
>
> (2) The **following sales by VAT-registered persons shall be subject to zero percent (0%) rate**:
>
> (a) **Export Sales**. - The term 'export sales' means:
>
> ...
>
> (5) Those **considered export sales under Executive Order No. 226**, otherwise known as the Omnibus Investment Code of 1987, **and other special laws**."
>
> (Emphasis, Ours.)

Implementing this provision is ***Rev. Regs. No. 16-2005, as amended by Rev. Regs. No. 4-2007. Section 4.106-5*** thereof states:

> "SEC. 4.106-5. Zero Rated Sales of Goods or Properties. — A zero-rated sale of goods or properties (by a VAT-registered person) is a taxable transaction for VAT purposes, but shall not result in any output tax.

[40] An Act Amending Republic Act No. 7227, as amended, otherwise known as the Bases Conversion and Development Act of 1992, and for other purposes.

However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund in accordance with these Regulations.

The following <u>sales by VAT-registered persons</u> shall be <u>subject to zero percent (0%) rate</u>:

(a) Export sales. — **"Export Sales"** shall mean:

...

(5) **Transactions considered export sales** under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, and other special laws.

"**Considered export sales under Executive Order No. 226**" shall mean the Philippine port F.O.B. value determined from invoices, bills of lading, inward letters of credit, landing certificates, and other commercial documents, of export products exported directly by a registered export producer, or the net selling price of export products sold by a registered export producer to another export producer, or to an export trader that subsequently exports the same; Provided, That sales of export products to another producer or to an export trader shall only be deemed export sales when actually exported by the latter, as evidenced by landing certificates or similar commercial documents; Provided, further, That pursuant to EO 226 and other special laws, even without actual exportation, **the following shall be considered constructively export**ed: (1) sales to bonded manufacturing warehouses of export-oriented manufacturers; (2) sales to export processing zones pursuant to Republic Act (RA) Nos. 7916, as amended, 7903, 7922 and other similar export processing zones; **(3) sale <u>to</u> enterprises duly registered and accredited with the Subic Bay Metropolitan Authority pursuant to RA 7227**; (4) sales to registered export traders operating bonded trading warehouses supplying raw materials in the manufacture of export products under guidelines to be set by the Board in consultation with the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC); (5) sales to diplomatic missions and other agencies and/or instrumentalities granted tax immunities, of locally manufactured, assembled or repacked products whether paid for in foreign currency or not.

...

(b) "Foreign Currency Denominated Sale" – ...

> (c) "Sales to Persons or Entities Deemed Tax-exempt under Special Law or International Agreement." — Sales of goods or property to persons or entities who are tax-exempt under special laws or international agreements to which the Philippines is a signatory, such as, Asian Development Bank (ADB), International Rice Research Institute (IRRI), etc., shall be effectively subject to VAT at zero-rate."
>
> (Emphasis, Ours)

Following the foregoing provisions, sales by VAT-registered entities, such as petitioner, to enterprises duly registered with the Subic Bay Metropolitan Authority pursuant to ***Republic Act No. 7227*** are subject to VAT zero-rating.

Pertinently, ***Republic Act No. 7227,***[41] ***as amended by Republic Act No. 9400,***[42] grants to enterprises within the Subic Special Economic Zone a 5% preferential tax rate on gross income earned to enterprises in lieu of all national and local taxes:

> "SEC. 12. Subic Special Economic Zone. – …
>
> (a) …
>
> (b) The Subic Special Economic Zone shall be operated and managed as a separate customs territory ensuring free flow or movement of goods and capital within, into and exported out of the Subic Special Economic Zone, as well as provide incentives such as tax and duty-free importations of raw materials, capital and equipment. However, exportation or removal of goods from the territory of the Subic Special Economic Zone to the other parts of the Philippine territory shall be subject to customs duties and taxes under the Tariff and Customs Code of the Philippines, as amended, the National Internal Revenue Code of 1997, as amended, and other relevant tax laws of the Philippines;
>
> (c) **The provision of existing laws, rules and regulations to the contrary notwithstanding, <u>no national and local taxes shall be imposed within the Subic Special Economic Zone</u>. <u>In lieu of said taxes, a five percent (5%) tax on gross income earned</u> shall be paid by all business enterprises within the Subic Special Economic Zone** and shall be remitted as follows: three percent (3%) to the National Government, and two (2%) percent to the Subic Bay Metropolitan Authority (SBMA) for distribution to the local government units affected by the declaration of and contiguous to the zone, namely: the City of Olongapo and the municipalities of Subic, San Antonio, San Marcelino and Castillejos of the Province of Zambales; and the

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[41] An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes (otherwise known as the Bases Conversion and Development Act of 1992), 13 March 1992.

[42] An Act Amending Republic Act No. 7227, As Amended, Otherwise Known As The Bases Conversion And Development Act Of 1992, And For Other Purposes, 20 March 2007.

> municipalities of Morong, Hermosa and Dinalupihan of the Province of Bataan, on the basis of population (50%) , land area (25%) , and equal sharing (25%) ."

(Emphasis, Ours.)

In ***Purisima v. Lazatin ("Purisima Case")***,[43] the Supreme Court emphasized the tax exemption of entities in the freeport economic zone, including VAT and excise tax:

> "RA 9400 and its Implementing Rules grant the following:
>
> First, the law provides that importation of raw materials and capital equipment into the FEZs shall be tax- and duty-free. It is the specific transaction (i.e., importation) that is exempt from taxes and duties.
>
> Second, the law also grants FEZ enterprises tax- and duty-free importation and a preferential rate in the payment of income tax, in lieu of all national and local taxes. These incentives exempt the establishment itself from taxation.
>
> Thus, the Legislature intended FEZs to enjoy tax incentives in general — whether with respect to the transactions that take place within its special jurisdiction, or the persons/establishments within the jurisdiction. From this perspective, the tax incentives enjoyed by FEZ enterprises must be understood to necessarily include the tax exemption of importation of selected articles into the FEZ.
>
> We have ruled in the past that FEZ enterprises' tax exemptions must be interpreted within the context and in a manner that promotes the legislative intent of RA 7227 61 and, by extension, RA 9400. Thus, we recognized that FEZ enterprises are exempt from both direct and indirect internal revenue taxes. In particular, they are considered VAT-exempt entities.
>
> In line with this comprehensive interpretation, we rule that the tax exemption enjoyed by FEZ enterprises covers internal revenue taxes imposed on goods brought into the FEZ, including the Clark FEZ, such as VAT and excise tax."

The ***Purisima Case*** also explains that goods, in such case petroleum and petroleum products, brought into the freeport economic zone and that remain therein are not taxable importations. It further clarifies that once the goods are introduced into the Philippine customs territory, they cease to enjoy the tax privileges accorded to FEZs and shall then be considered as an importation subject to all applicable national internal revenue taxes and customs duties.

[43] G.R. No. 210588, 29 November 2016.

In the instant case, petitioner presented Certificates of Tax Exemption[44] to prove that its customer, WAC, is an enterprise duly registered with the Subic Bay Metropolitan Authority.

Upon consummation of the contract between petitioner and WAC, ownership of the automobiles passes on to WAC. The automobiles will then form part of WAC's inventory considering that WAC's primary purpose is to engage in the sale and distribution of motor vehicles.[45] The tax treatment of any subsequent sale between WAC and its customers will then depend on the identity of WAC's customers but have no bearing on petitioner.

Considering the foregoing, petitioner is not liable for the VAT assessed.

WHEREFORE, premises considered, the instant Petition for Review filed by Global Cars Phils., Inc. is **GRANTED.** Accordingly, the Formal Letter of Demand and Assessment Notices dated 14 December 2017, Final Decision on Disputed Assessment dated 4 November 2019, and Final Decision dated 4 November 2019 are hereby **CANCELLED AND WITHDRAWN**.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[44] Exhibits P-17 and P-18, Division Records Vol. 2, pp. 883-884.
[45] Exhibit "P-20", Division Records Vol. 3, p. 1262.

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice